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Practitioner's Docket No. 22-0123

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: David A. Wright, Michael W. Mann, Aaron D. Falk, and Rhon L. Williams

Application No.: 09/782,807

Group No.: Unassigned

Filed: 02/14/2001

Examiner: Unassigned

For: ENCAPSULATION METHOD AND APPARATUS FOR COMMUNICATING FIXED-LENGTH DATA PACKETS THROUGH AN INTERMEDIATE NETWORK

Box DAC  
Commissioner for Patents  
Crystal Park One, Suite 520  
Washington, D.C. 20231

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FEB 06 2003

OFFICE OF PETITIONS

ATTENTION: Petition Information  
Crystal Park One, Suite 520  
(M.P.E.P. § 1002.02(b), 7th ed.)

**PETITION FOR REVIVAL OF AN APPLICATION  
FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 C.F.R. § 1.137(a)**

1. Applicant petitions for the revival of the above-identified application.

2. Nature of abandonment:

In an office communication from the PTO dated January 15, 2003 the undersigned has noted that the above-identified application is being forwarded to the Abandoned Files because applicant's response to the Notice to File Corrected Application Papers mailed April 6, 2001 has not been received within the statutory period or any extension requested therefor.

3. Response filed:

The proposed response to the Notice to File Corrected Application Papers is enclosed herewith.

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**CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))**

I hereby certify that this correspondence is, on the date shown below, being:

**MAILING**

deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231.

**FACSIMILE**

transmitted by facsimile to the Patent and Trademark Office, (703) \_\_\_\_\_

  
Signature

Lorna L. Schott

(type or print name of person certifying)

Date: January 29, 2003

02/06/2003 CV0111 00000014 201515 09782807

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Petition to Revive Application Abandoned Unavoidably--page 1 of 2

4. Showings from the relevant parties as to the causes of the unavoidable delays are filed herewith; said showing establishes that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unavoidable. 37 C.F.R. § 1.137(a)(3).
5. It will be seen from the attached showings that the processing procedures have been carefully reviewed and that steps have been taken to avoid repetition of the events which took place in this case so that a similar error will not be made in the future.
6. Terminal disclaimer 37 C.F.R. § 1.137(c)

Abandonment took place on January 15, 2003.

As this petition concerns an application which is neither a design application nor an application filed before June 8, 1995, no terminal disclaimer is required.

7. Status of applicant:

This application is on behalf of other than a small business entity-fee \$110.00

8. Fee payment:

Authorization is hereby made to charge the amount of \$110.00 to Deposit Account No. 20-1515.

Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this petition is attached.

9. Because this petition is more than 1 year after the date of abandonment, applicant additionally submits further information as to when the applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).

Date: January 29, 2003

Tel. No.: 310-812-4910

  
Noel F. Heal, Reg. No. 26,074  
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**SHOWING OF UNAVOIDABLE DELAY IN RESPONDING TO  
NOTICE TO FILE CORRECTED APPLICATION PAPERS**

Sir:

Applicant submits that, for the following reasons, the delay in responding to a Notice to File Corrected Application Papers was unavoidable.

1. Applicant did not receive the Notice to File Corrected Application Papers until January 21, 2003.
2. Applicant's non-receipt of correspondence was apparently due in part to an erroneous ZIP code entered on the Utility Patent Application Transmittal. Specifically, Applicant's address was correct except for the ZIP code "90245," which should have been "90278."

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3. Applicant maintains that this typographical error alone should not have caused non-delivery of correspondence pertaining to this application, because:

a. Applicant's correct ZIP code appeared elsewhere in the application papers, including the return postcard receipt, the Express Mail transmittal form and the assignment recordation cover sheet.

b. The erroneous ZIP code is geographically located only a few miles from Applicant's street address, which is well known in the surrounding community, and the US Postal Service often delivers mail to this street address in spite of incorrect or missing ZIP codes.

c. Since the missing correspondence was not delivered to Applicant, then it was presumably returned to the Patent and Trademark Office. Every item of correspondence from the Office is contained in an envelope bearing the Office address (and in some instances an identified Organization and Bldg/Room). Each such envelope also bears the prominent legend: "IF UNDELIVERABLE RETURN IN TEN DAYS."

d. One would reasonably expect that the Patent and Trademark Office has a procedure for handling mail returned as undeliverable. While Applicant is not aware of the details of such a procedure, one might reasonably expect that the mail would be returned to the organization within the Office from which it came, and that at least some effort would then be made to correct Applicant's address or to contact Applicant by telephone. Applicant's telephone number is included in the Application Transmittal and elsewhere in the application papers.

4. Attached to this petition is a copy of each of:

a. The Utility Patent Application Transmittal (containing the erroneous ZIP code).

b. The return postcard receipt (containing Applicant's correct address and ZIP code).

c. The Express Mail transmittal form used to file the application papers (containing Applicant's correct address and ZIP code).

d. The assignment cover sheet (containing Applicant's correct address and ZIP code).

e. A subsequently filed Request for Correction of Notice of Recordation of Assignment Document (containing Applicant's correct address and ZIP code).

5. Applicant contends that this is one of those rare sets of circumstances that qualifies for designation as an "unavoidable" delay. Applicant's only contribution to the chain of events that led to abandonment of the application was a small typographical error in one of several instances of Applicant's ZIP code in the application papers. Applicant further contends that an occasional typographical error in the preparation of large numbers of transmittal papers is unavoidable. Applicant takes reasonable precautions to ensure that application papers are prepared without errors. The person preparing the papers proof-reads his or her work and the attorney signing the papers reviews them again, but Applicant believes that there is no practical system of error checking available that will detect every typographical error in every filed document. The person making the error in this instance is Applicant's Patent Administrator, with over ten years of experience in handling patent applications.

6. The subsequent chain of events includes:

- a. Failure (for reasons unknown) of the US Postal Service to deliver the correspondence to Applicant, even though the erroneous ZIP code is in a nearby geographical area and Applicant's location is well known to all who live and work in the area.
- b. Possible failure of the US Postal Service to return the undelivered correspondence to the Patent and Trademark Office, in spite of instructions on the envelope to return undeliverable mail.
- c. Possible failure of the Patent and Trademark Office, when and if the correspondence was returned, to correct Applicant's address or to contact Applicant by telephone.

Applicant had no control over any of these subsequent events and, for this reason, respectfully maintains that the resulting delay in responding and the abandonment of the application were completely unavoidable.

Respectfully submitted,



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